



House of Representatives

General Assembly

File No. 174

February Session, 2006

Substitute House Bill No. 5447

House of Representatives, March 28, 2006

The Committee on Environment reported through REP. ROY of the 119th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING ENCROACHMENT ON OPEN SPACE LANDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2006*) (a) As used in this
2 section, "open space land" includes, but is not limited to, any park,
3 forest, wildlife management area, refuge, preserve, sanctuary, green or
4 wildlife area owned by the state, a political subdivision of the state or a
5 nonprofit land conservation organization and "encroach" means to
6 conduct an activity that causes damage or alteration to the land or
7 vegetation or other features thereon, including, but not limited to,
8 erecting buildings or other structures, constructing roads, driveways
9 or trails, destroying or moving stone walls, cutting trees or other
10 vegetation, removing boundary markers, installing lawns or utilities,
11 or using, storing, or depositing vehicles, materials or debris.

12 (b) No person may encroach or cause another person to encroach on
13 open space land or on any land for which the state, a political
14 subdivision of the state or a nonprofit land conservation organization
15 holds a conservation easement interest, without the permission of the

16 owner of such open space land or holder of such conservation
17 easement or without other legal authorization.

18 (c) Any owner of open space land or holder of a conservation
19 easement subject to the provisions of subsection (b) of this section or
20 the Attorney General may bring an action in the superior court for the
21 judicial district where the land is located against any person who
22 violates the provisions of said subsection with respect to such owner's
23 land or land subject to such conservation easement. The court shall
24 order any person who violates the provisions of subsection (b) of this
25 section to restore the land to its condition as it existed prior to such
26 violation or shall award the landowner the costs of such restoration,
27 including reasonable management costs necessary to achieve such
28 restoration. In addition, the court may award reasonable attorney's
29 fees and costs and such injunctive or equitable relief as the court
30 deems appropriate.

31 (d) In addition to any damages and relief ordered pursuant to
32 subsection (c) of this section, the court may award damages of up to
33 five times the cost of restoration or statutory damages of up to five
34 thousand dollars. In determining the amount of the award, the court
35 shall consider the willfulness of the violation, the extent of damage
36 done to natural resources, if any, the appraised value of any trees or
37 shrubs cut, damaged, or carried away as determined in accordance
38 with the latest revision of The Guide for Plant Appraisal, as published
39 by the International Society of Arboriculture, Urbana, Illinois, or a
40 succeeding publisher, any economic gain realized by the violator and
41 any other relevant factors.

42 Sec. 2. Section 52-560 of the general statutes is repealed and the
43 following is substituted in lieu thereof (*Effective October 1, 2006*):

44 Any person who cuts, destroys or carries away any trees, timber or
45 shrubbery, standing or lying on the land of another or on public land,
46 except on land subject to the provisions of section 1 of this act, without
47 license of the owner, and any person who aids therein, shall pay to the
48 party injured five times the reasonable value of any tree intended for

49 sale or use as a Christmas tree and three times the reasonable value of
50 any other tree, timber or shrubbery; but, when the court is satisfied
51 that the defendant was guilty through mistake and believed that the
52 tree, timber or shrubbery was growing on his land, or on the land of
53 the person for whom he cut the tree, timber or shrubbery, it shall
54 render judgment for no more than its reasonable value.

55 Sec. 3. Subsection (b) of section 23-65 of the general statutes is
56 repealed and the following is substituted in lieu thereof (*Effective*
57 *October 1, 2006*):

58 (b) Any person, firm or corporation, other than a tree warden or
59 deputy tree warden, who removes, prunes, injures or defaces any
60 shrub or ornamental or shade tree, within the limits of a public way or
61 grounds, without the legal right or written permission of the town tree
62 warden, the borough tree warden, the city forester, the Commissioner
63 of Transportation, the Department of Public Utility Control or other
64 authority having jurisdiction, [shall be fined not more than the
65 appraised value of the shrub or tree and shall be liable civilly for
66 damages] may be ordered by the court in any action brought by the
67 property owner or the authority having jurisdiction affected thereby to
68 restore the land to its condition as it existed prior to such violation or
69 shall award the landowner the costs of such restoration, including
70 reasonable management costs necessary to achieve such restoration,
71 reasonable attorney's fees and costs and such injunctive or equitable
72 relief as the court deems appropriate. In addition, the court may award
73 damages of up to five times the cost of restoration or statutory
74 damages of up to five thousand dollars. In determining the amount of
75 the award, the court shall consider the willfulness of the violation, the
76 extent of damage done to natural resources, if any, the appraised value
77 of the shrub or ornamental or shade tree, any economic gain realized
78 by the violator and any other relevant factors. The appraised value
79 shall be determined by the town tree warden, the borough tree
80 warden, the city forester, the Commissioner of Transportation, the
81 Department of Public Utility Control or other authority having
82 jurisdiction and shall be determined in accordance with regulations

83 adopted by the Commissioner of Environmental Protection. The
84 commissioner shall adopt regulations, in accordance with the
85 provisions of chapter 54, to develop guidelines for such plant
86 appraisal. The regulations may incorporate by reference the latest
87 revision of The Guide for Plant Appraisal, as published by the
88 International Society of Arboriculture, Urbana, Illinois. Until such time
89 as regulations are adopted, appraisals may be made in accordance
90 with said Guide for Plant Appraisal.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	New section
Sec. 2	<i>October 1, 2006</i>	52-560
Sec. 3	<i>October 1, 2006</i>	23-65(b)

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Attorney General	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
Various Municipalities	Cost	Potential	Potential

Explanation

The bill increases the civil penalties that the Office of the Attorney General (OAG) may obtain from any person, other than a tree warden, who willfully violates statutory prohibitions against the removal, pruning, injuring or defacing of any shrub or ornamental or shade tree within the limits of a public way or grounds. It also allows the OAG to bring an action in the superior court on behalf of any non-profit owned land. As this provision is permissive, the OAG could accommodate any workload increase without requiring additional appropriations. It is anticipated that any non-profit represented by the OAG would pay for the litigation expenses incurred.

Since the legislation is discretionary, it is anticipated that any increase in costs to an impacted municipality associated with bringing an action against a violator, would be handled within existing resources.

The Out Years

The annualized ongoing fiscal impact identified above would

continue into the future subject to inflation.

OLR Bill Analysis**sHB 5447*****AN ACT CONCERNING ENCROACHMENT ON OPEN SPACE LANDS.*****SUMMARY:**

This bill prohibits people from encroaching or causing anyone to encroach on open space land, or any land in which the state, its political subdivisions, or a nonprofit land conservation organization holds a conservation easement interest without the owner's permission or other legal authorization. It authorizes anyone with a property interest in such open space land, or the attorney general, to bring an action against the violator in Superior Court for the judicial district where the land is located. It specifies the orders, awards, fines, costs, and fees the court may impose on people who encroach on open space land and imposes the same orders, awards, fines, costs, and fees on people who illegally remove, prune, injure, or deface a shrub or ornamental or shade tree within the limits of a public way or public grounds without the appropriate legal permission.

EFFECTIVE DATE: October 1, 2006

OPEN SPACE LAND

Under the bill, open space land includes any park, forest, wildlife management area, refuge, preserve, sanctuary, green, or wildlife area owned by the state, its political subdivisions, or a nonprofit land conservation organization.

ENCROACHMENT

Under the bill, encroaching means to conduct an activity that damages or alters the land, vegetation, or other features, including erecting buildings or other structures; building roads, driveways, or

trails; destroying or moving stone walls; cutting trees or other vegetation; removing boundary markers; installing lawns or utilities; or using, storing, or depositing vehicles, material, or debris.

ORDERS, AWARDS AND PENALTIES FOR ILLEGAL ENCROACHMENT

If the court finds there has been illegal encroachment, it must (1) order the violator to restore the land to the condition it was in before the encroachment or (2) award the landowner the costs of such restoration, including reasonable management costs needed to achieve the restoration. The court may also award reasonable attorneys' fees and such injunctive or equitable relief it finds appropriate.

The bill also authorizes the court to award damages of up to five times the cost of restoration, or up to \$5,000. In determining the award amount, the court must consider (1) the willfulness of the violation; (2) the extent of damage to natural resources; (3) the appraised value of any trees or shrubs cut, damaged, or carried away; (4) any economic gain the violator realized; and (5) any other relevant factors. In determining the appraised value of trees or shrubs cut, damaged, or carried away, the court must refer to the latest revision of *The Guide for Plant Appraisal*, published by the International Society of Arboriculture, Urbana, Illinois, or a succeeding publisher.

REMOVING, PRUNING, INJURING OR DEFACING SHRUBS OR TREES IN PUBLIC WAYS AND GROUNDS

Under current law, the penalty for anyone (except a tree warden or deputy tree warden) who removes, prunes, injures, or defaces any shrub or ornamental or shade tree within the limits of a public way or grounds, without the appropriate legal permission, is a fine of up to the appraised value of the tree or shrub. The violator is also liable for civil damages. The bill eliminates these penalties and replaces them with the same penalties, orders, awards, fees, costs, and equitable or injunctive relief it applies to people who encroach on open space land. The court must consider the same factors in determining the amount of the award as above, except that, by law, the authority with jurisdiction

over the trees or shrubs must determine the appraised value of the trees or shrubs according to Department of Environmental Protection regulations.

The above penalties do not apply to the illegal cutting of trees, timber, or shrubbery on private property or public land not considered open space land.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/10/2006)